Supreme Court, U.S.
FILED
JUL 16 1993
OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MARK E. VREELAND,

Petitioner,

vs.

JAMES TOWNSEND, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

John G. Rust, Esq.
4628 Lewis Avenue
Toledo, Ohio 43612
(419) 476-0347

Attorney for Petitioner.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. If a plaintiff then temporarily mentally ill, emotionally disturbed, and obviously so, calls the Deputy Sheriff "911" Operators, an agency under a constitutionally and Michigan State Law imposed and recognized duty, not by the operators' hostile, belittling, and denigrating remarks to belittle or ridicule, but to be supportive, and is their failure actionable by both the 14th Amendment as a state abuse of power, denying his emotional well-being, and also by Michigan Law, when intentional or grossly negligent, as stated by a Toledo police officer in regard to the Monroe County, Michigan "911" Operators?

2. When did "911" Operators, by calling Plaintiff 'crazy," and making fun of him to a marked degree, intentionally or grossly negligently, so disturb him and cause him a loss of personal security, and emotional well-being, when he was mentally and emotionally disturbed and vulnerable, and thus not

able to defend himself as a mentally normal person would, with the result that he was caused to leave the safety of his home, and to walk out with an unloaded shotgun, under such circumstances, that the "911" Operators knew that he would be required to confront the Deputy Sheriffs, and then, due to his well-demonstrated stubbornness, and defiance in his mentally disturbed condition, caused by the "911" operators' insults, then point the unloaded gun at the deupties, so as to cause them to shoot him?

3. Does the evidence demonstrate a violation of the Equal Protection of the Law, in showing that the "911" Operators of Monroe, Michigan were helpful and respectful to the intoxicated, or others needing help, but discriminated against the obviously mentally ill, as Plaintiff then most certainly was, although Plaintiff may have been vexing and retaliatory to the "911" Operators' remarks?

4. Was Plaintiff, under a Rule 56(f) ii

motion filed November 4, 1991, before the Magistrate's hearing, after the close of Discovery, and when facing a Summary Judgment Motion, entitled to leave to depose the "911" Operators, and their policy-setting superiors, on their policy, custom, usage, instructions and training, when Plaintiff was represented by the only attorney that he could get, an attorney umfamiliar with the complexities of Section 1983 actions, and the delay of no more than 2 weeks, involved in such requested depositions would not have substantially delayed the judicial processes and decision making in the District Court, by as much as two weeks, and the District Court did not rule until January 27, 1992, two months and 23 days after the Motion?

5. Should the District Court, instead of dismissing the State actions with prejudice, under Federal U.S. Title 28, Section 1367(d) have dismissed the State actions, for slander, defamation, libel, intentional emotional distress, assault and

battery, and any other State grounds, which each involved numerous and significant questions of law, either complex, unsettled, not fully determined, and best decided, by th Michigan Appellate and Supreme Court, have so dismissed, so that Plaintiff could refile his State actions, in the State Court, and not be facing the Statute of Limitations?

TABLE OF CONTENTS

		PAGE
1.	Statement of Questions Presented For Review	i
2.	Table of Contents	v
3.	Table of Authorities	
4.	Petition For Writ of Certiorari	1
5.	Constitutional and Statutory Privisions	3
6.	Statement of the Case	4
7.	Statement of District Court and Appellate Jurisdiction	4
8.	Statement of the History of the Case in the District Court	8
9.	Argument No. I	15
10.	Argument No. II	27
11.	Argument No. III	33
12.	Argument No. IV	36
13.	Argument No. V	37
14.	Conclusion	41
15.	Certificate of Service	

TABLE OF AUTHORITIES

	PAGE
Archie v. City of Racine, 826 F.2d 480	31
Archie v. City of Racine. 847 F.2d 1211 CCA	31
Balistera v. Pacifica Police Department, 855 F.2d 1421, (CA 9, 1988)	30
Callaghan's Michigan Civil Jurisprudence	35
Callaghan's Michigan Practice, Assault and Battery 528	36
Campos v. Oldsmobile Division, GMC, 71 Mich. App. 23, 246 NW.2d 353, 354	37
Conley v. Gibson, 355 U.S. 41, 2L.ed 2d, 80 (1957)	41
Fisher v. Metropolitan Life Insurance Co., 895 F.2d 1073 (CA5, 1990)	39
Financial General Bankshares, Inc., v. Metzger, 680 F.2d 867 (CA D.C., 1982)	35
Hall v. Citizens Insurance Co., 368 N.W. 2d. 250 (1985)	36
Jones v. Sherrill, 827 F.2d 1102, (Ca6, 1987)	15
Nishiyama v. Dickson County, Tennessee, 814 F.2d 277 (CA6, 1987)	25
Pharo v. Smith, 625 F.2d 1226	35

	Page
Title 42, USCS Section 1983	3
Title 28, USCS Section 1254	2
Title 28, USCS Section 1291	8
Title 28, USCS Section 1330	6
Title 28, Section 1367, Supplemental Jurisdiction Subsection C (3)	33
U.S. Constitution, Amendment 14, Section 1. and 5.	3
Vinson v. Campbell County Court, 82 O F.2d 195 (CA 6, 1987)	15
White v. Rockford, 592 F.2d 15.	25

CERTIFICATE OF SERVICE

John G. Rust, Counsel for Petitioner hereby certifies that he, on July 13, 1993, served three (3) copies of the foregoing Petition on Attorney Marcia L. Howe (Lead Counsel), Michael E. Rosati, Esq., Cummings, McClorey, 33900 Schoolcraft, Ste. G-1, Livonia, MI 48150-1392, Attorneys for All Defendnats Except State Trooper Murphy, Brian D. Devlin, Esq., Michigan Department of Attorney General Tort Defense Division, P.O. Box 30217, Lansing, MI 48909, Attorney for Defendant State Trooper Murphy.

Respectfully submitted,

John G. Rust

John G. Rust
Attorney for Petitioner

vii

FOOTNOTE LIST OF ALL PARTIES.

Mark E. Vreeland,

Petitioner.

v.

James Townsend,

Lynn Hardaway,

Donald Horvath,

Lauwer (first name unknown)

James Gruber,

Richard Sweat,

Vincent Burkey,

Daniel Balino,

Walter Trobridge,

Monroe County Sheriff,

Monroe County Central Dispatch,

9-1-1 Agency or Organization,

Carl VanWerdt,

Henrik Kanavel,

Michael Murphy,

William Frey,

Office of the County Prosecutor,

Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioner Mark E. Vreeland does hereby petition the Honorable Supreme Court of the United States to issue in this case a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit.

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINION.

No opinions by either the Court of Appeals, nor the District Court, have been published.

STATEMENT OF JURISDICTIONAL GROUNDS

The United States Court of Appeals for the Sixth Circuit, judgment herein sought to be reviewed was rendered on April 14, 1993, and on May 27, 1993 the Panel who heard and rendered the judgment herein sought to be reviewed, denied appellant's "Petition For Rehearing En Banc", timely filed on April 28, 1993. See Page App. 21 of the Appendix filed in this Court. The said Petition For

Rehearing En Banc" was intended as a Petition for Rehearing under Federal Rules of Appellate Procedure 40, and complied therewith in the number of pages and in the points of law and Argument provision, reading: ..."The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present."...

In 28 USCS Section 1254, the text reads:

> "§1254. Courts of appeals; certiorari; certified questions
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy." -2-

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitutional provisions are, in Section 1 and 5, as in the USCS series, as follows:

"AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Sec. 5. Power to enforce amendment.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The relevant Federal statute is, as in the USCS series, 42 USCS Section 1983, which there reads:

"§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, -3-

any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
(R.S. §1979; Dec. 29, 1979, P.L. 96-170, §1, 93 Stat. 1284.)"

STATEMENT OF THE CASE

STATEMENT OF DISTRICT COURT AND APPELLATE JURISDICTION

This appeal arises out of the action filed on April 23, 1990, in the United States District Court for the Eastern District of Michigan, Southern Division, in Ann Arbor, and was later transferred to the Detroit Branch of that District Court. The action is one for personal injuries, denial of constitutional rights, of emotional well-being, and personal security, assault, slander, libel, and intentional tort, by Plaintiff Vreeland, a citizen of Toledo, Ohio,

against the 911 operators, other various Deputy Sheriffs, a Michigan State Trooper Murphy, and the members, of the governing body for the 911 organization. Plaintiff Vreeland's action, arises, when he on April 23, 1988, intoxicated, possibly under the influence of some drugs, and at a time when he was severly emotionally disturbed and temporarily mentally ill, called to the 911 Monroe County Agency, for help, but instead was ridiculed, insulted, slandered and libeled. At that time Petitioner Vreeland was so mentally ill and emotionally disturbed that his mental defenses were very vulnerable, and easily upset and were so caused by the hostile and demeaning treatment by the 911 operators, from whom he had expected help, as the 911 agency held itself out as a "First Call for Help" type of agency. Then 911 insults and ridicules caused Mr. Vreeland to lose even his impaired judgment, which up to then had directed and caused him to remain in the safety of his home. But -5-

with his judgment then further impaired, he was overcome with anger at the 911 insults, and further depressed and incited by the 911 offers to kill him, which appealed to his depressed and self-unworthiness instincts, and all these, and other factors from the 911 attack upon him, caused him to leave his residence and then, while carrying a shotgun, with the breech open, unloaded, was walking down a country road, and while still obviously mentall ill, was stopped by a deputy sheriff, and was about to come to an agreement and terms with him, and then no injury would have befelled him. But two other deputy sheriffs, ran their sheriff's car right at Mr. Vreeland, as described by a State Trooper, as though to hit him, and then Plaintiff became hostile, refused to put his gun down, pointed it at one of the deputies, who thereupon shot him in the left arm, causing permanent injury.

Jurisdiction in the District Court, was based upon Title 28 USC Section 1330, for -6-

diversity of citizens, Plaintiff being an Ohio citizen, and also under Section 1331, as Plaintiff herein claims a denial of constitutional and federal rights.

On January 31, 1992, the Honorable Gerald E. Rosen, United States District Judge, granted the Motions of all Defendants for Summary Judgment, and denied Plaintiff's Motions for Limited Discovery under Rule 56 (F). On Monday, February 10, 1992, Plaintiff timely served a Motion under Rule 59, and also his second Motion for Discovery under Rule 56(F), and the same was timely filed on February 13, 1992.

Plaintiff, then, on Monday, March 2, 1992, timely filed a Notice of Appeal from the District Court Judgment of Dismissal of the action of January 31, 1992, and this appeal then was numbered 92-1341 by the Court of Appeals For the Sixth Circuit, and was then dismissed on April 10, 1992, for the reason that there was then no appealable final order in the District Court. -7- Thereafter, on March

23, 1992, District Judge Gerald E. Rosen, denied Plaintiff's Rule 59 Motion, and for additional discovery udner Rule 56(F), and thereafter timely, Plaintiff filed his Notice of Appeal on April 22, 1992, and that appeal, bears the number 92-1534, the instant appeal. Jurisdiction for this appeal is given by Title 28 USCS Section 1291.

STATEMENT OF THE HISTORY OF THE CASE IN THE DISTRICT COURT:

As stated above, this action was started by the filing of Plaintiff's Complaint on April 23, 1990, at the Ann Arbor Branch of the United States District Court for the Eastern District of Michigan, Southern Division, under an In Forma Pauperis. Thereafter it was referred to the Detroit Branch. The 911 operators, from three of the regular deputies, to the sargeant, and also to the top person in command of that shift, believed to be a lieutenant, either received or learned of Mr. Vreeland's request for help and learned also that he then was obviously

mentally ill. The deputies, then proceeded, however, to call him "crazy", a chimpanzee, implied he was a homosexual, and, in general, ridiculed and showed their hostility and derision toward him. We claim the unprofessional, outrageous, and unacceptable acts by the sheriff deputies, caused him to leave (the safety of his residence, and to walk, with an unloaded, breech-opened shotgun, on one of the country roads. In time, he was seen there by a sheriff deputy, and, at first, this deputy Bellino, and Plaintiff were about to make their peace, and to refrain from violence. Two other sheriff deputies drove their sheriff's car, however, right at the Plaintiff, as though to hit him as described by a State Trooper Brown, for which we claim an assault action, and then, being further made angry, and more emotionally unable to use his judgment, and Deputy Sheriff Bellino then, shot Plaintiff in the left arm, permanently injuring him. Petitioner Vreeland was criminally pro- -9-

secuted for felonious assault, and after an extended time in jail, and after two appointed psychiatrics differed on whether Mr. Vreeland was mentally culpable for his acts, a Plea Bargain was negotiated, but held up by Prosecutor Frey and Michigan State Trooper Murphy because Mr. Vreeland would not sign a civil release. We claim this was an unconstitutional deprivation by the Prosecutor and the State Trooper. In time, the Prosecutor and the State Trooper dropped their demand for a civil release, and immediately a Plea Bargain was struck, and Mr. Vreeland was immediately released. This action is for personal injury, slander, libel, intentional tort, and assault, against multiple Monroe County Deputy Sheriff and 911 personnel, and against Prosecutor Frey and Michigan State Trooper Murphy.

This was the first Section 1983 action handled by this counsel and some fifteen (15) or twenty (20) years had past since this counsel had filed an action in that -10-

Michigan Federal District Cout. No notice was given until much later, after one (1) year had passed, that Defendants Walter Trobridge, 911 Agency, Carl VanWerdt and Henrik Kanavel, had not been served, and they were dismissed by Judge Gerald E. Rosen on June 13, 1991. A scheduling conference was held then on June 26, 1991 and a pre-trial order issued, setting a deadline for Discovery of August 30, 1991. The Monroe County DEfendants were represented by Attorney Michael E. Rosati, and Plaintiff filed Answers to his Interrogatories. On September 5, 1991, Defendant Michael Murphy, by Assistant Attorney General Brian D. Devlin, filed a Motion for Summary Judgment, and also believed to be before the Motion deadline, Attorney, Michael E. Rosati for the remaining Monroe County Defendants, also filed a Motion for Summary Judgment. These two Motions were referred to Judge Magistrate Virginia M. Morgan, and were argued orally before her on November 4, 1991, and a trans-

cript of that oral argument was in the Court of Appeals Appendix. Plaintiff in opposition filed a Brief and Affidavits of Plaintiff, and of this cousnel as to the authenticity of the tape of the proceedings of the 911 organization with Plaintiff, on the night in question of April 23, 1988, and in time a transcript, as prepared by this cousnel's secretary of the said tape, was filed, and appears at Page 58 of the Appendix in this Court. The copy of the tape, is on file with the Clerk, and its authenticity has not been challenged nor questioned by anyone. On November 4, 1991, Plaintiff filed a "Motion Under Rule 56(F) For Leave To Take Depositions of SEveral Key Witnesses, Dealing Primarily With the Instruction, Policies, and Training of the 911 ORganization of Monroe County, and the Supervisor, and Deputies Acting on the Night in Question". This Motion was supported by this counsel's Affidavit and reference made to an Affidavit of a retired Toledo Police Officer, -12-

stating that the actions and omissions of the 911 operators in question constituted departures from the standard practices, were intentional, without any regard or concern for Mr. Vreeland, and further pointed out that these depositions could be taken shortly, in two weeks time or less, so as not to hold up the actions of Judge Magistrate Morgan, and Judge Gerald E. Rosen. On November 27, 1991, Judge Magistrate Virginia M. Morgan denied Plaintiff's Rule 56(F) Motion for Discovery,a nd also, Magistrate Morgan entered her Report and Recommendation that the Motions for Summary Judgment as to all defendants be granted; and this order then was entered on December 2, 1991, and received by this counsel later. This counsel then timely filed on December 13, 1991, Objections, Memoranda, and Affidavits and Attachments, in Opposition to the Magistrate's Report and Recommendation. Thereafter on January 27, 1992, Plaintiff filed another Motion, supported by Affi- -13-

davit, for Leave to Depose the 911 Operators, and those determining their training, practices and policies.

On January 31, 1992, Judge Gerald E. Rosen, then entered jdugment, with an (Entry Date of February 3, 1992) granting Summary Judgment for all Defendants, and further ordering, that any appeal by Plaintiff would be frivolous and not in good faith.

Then timely, Plaintiff filed a Motion Under Rule 59, and also for Leave For Discovery Under Rule 56(F).

Then, on March 23, 1992, Judge Rosen denied Plaintiff's Motion for a New Trial, Under Rule 59, and denied Plaintiff's Motion for Additional Discovery Under Rule 56(F), and Plaintiff then timely filed his Notice of Appeal to the Court of Appeals For the Sixth Circuit on April 22, 1992.

ARGUMENT

I. THE SIXTH CIRCUIT COURT OF APPEALS HAS DENIED PETITIONER RECOVERY FOR AN ARBITRARY INTRUSION DENIAL, AND LOSS OF HIS EMOTIONAL WELL-BEING BY EITHER THE GROSSLY NEGLIGENT, OR INTENTIONAL, KNOWINGLY WRONGFUL ACTS OF THE 911 OPERATORS, WHEREAS RECOVERY FOR THE SAME HAS BEEN ALLOWED FOR GROSS NEGLIGENCE IN WHITE V. ROCKFORD, 592 F. 2d. 381, 385 (CA 7, 1979); AND ALSO THE SEVENTH CIRCUIT REQUIRED INTENTIONAL WRONGDOING, IN AN EN BANC DECISION, ARCHIE V. CITY OF RACINE, 847 F.2d 1211, (CA 7, 1988).

HERETOFORE, THE SIXTH CIRCUIT HAS ALLOWED 1983 RECOVERIES FOR GROSS NEGLIGENCE VINSON V. CAMPBELL COUNTY COURT, 820 F. 2d. 195, (CA 6, 1987) AND JONES V. SHERRILL, 827 F.2d 1102 (CA 6, 1987).

The present Court of Appeals Opinion misapprehends and overlooked the appalling, uncalled for, acts of the 911 Operators in slandering, denigrating, humiliating knowingly Mr. Vreeland, recognized by the sheriff deputies 911 Operators as being "crazy", when he was obviously so mentally disturbed that he needed to be taken to a Mental

Health Hospital as required by Michigan Statutes Annotated Section 14.800 (427 et se.) as simple negligence whereas the unattacked affidavit of a retired, police officer, experienced in dispatcher duties, unequivocally criticized the 911 operators uncalled for actions as gross negligence, and intentional, and therefore Plaintiff made a Prima Facie Section 1983 case for an invasion of his emotional security.

The tape of the 911 Operators' words has been transcribed, by this counsel's secretary, and appears in the Appendix at Page 58. A copy of the 911 tape has been duly verified by an Affidavit of Attorney Dale Lockwood, who received it from Prosecutor Frey, while representing Mr. Vreeland in the Criminal prosecution of Mr. Vreeland.

In Mr. Vreeland's Affidavit, filed November 8, 1991, he stated in paragraph 1:

> "1. Plaintiff Vreeland states that when Sheriff Deputies Sweat and Berkey ran their Sheriff's car right at him up to two feet near him, that this scared him very much, and that this caused Mark then to step from where -16-

he was standing, to avoid being hit, and scared him because he feared he might be hit, and made him mad and felt then that all of the Sheriff Deputies were his enemies, where as before he had not felt that way as to Deputy Sheriff Bellino. Plaintiff says things were calming down between Deputy Bellino and him, and Mark at those times, did not have the shotgun closed, but rather the shotgun was open breech, broken there. And then it was resting upon his shoulder, but then after Deputies Berkey and Sweat assaulted him, and Mark then says that he ran backwards. But, Mark knows all of what he did was caused by reason of the hostility and the anger that was generated by Deputies Sweat and Berkey running their Sheriff Deputy's car right up to him as though to hit him. This was witnessed by the Michigan State Trooper. Also Operator 6 told me to "go and kill yourself". This caused great anger and anguish, and influenced me to further become hostile in my mind at that time."

In the "Affidavit of Plaintiff Mark E. Vreeland in Support of Objection To Magistrate's Report and Recommendation", filed January 27, 1992, Entry 59, he stated, at paragraph 2:

"2. During the early morning hours of April 23, 1988, I began walking down the road from my residence with a broken-down shotgun over my shoulder. My residence at the time was 266 E. Hurd Rd., and I had just finished

talking with these deputies on and off for well over an hour and a half. I remember that the reasons that I left my home, walking down the road with a shotgun over my shoulder, were because I was persuaded by the Monroe County Sheriff's Departments 911 Dispatch Operators into believing that I was less important than other people, that my life was not worth living and that I should kill myself, and that I was just a "sick bastard," and that "they", the Monroe County Sheriff's Department would "oblige" in killing me."

3. All these things were told to me and more from the 911 Dispatch Operators, and all during a time in which I was truly suffering and needed psychiatric help. For a great while, my life seemed to be falling apart after I returned home to Monroe, Michigan, after having served 2-1/2 years in West Germany, and a total of 3 years in the U.S. Army all together. I could not seem to re-adapt to normal nonmilitary life. Problem after problem arose one after another until it got so bad that I began to lsoe my midn, and was becoming ill, and I was unable to find help. On that date (April 23, 1988) my suffering had become so

-18-

bad that I now no doubt needed psychiatric help. Also, at that time, I was also very heavily intoxicated from having consumed an unusual amount of alcohol. I called 911 because I had never attempted to turn to them for help. I was in some sort of sate of paranoia in my mind as a result of my illness. I recall that paranoia was the reason that I didn't give my address to the dispatchers even though I gave them my name and social security number. Another reason I didn't give my address was because the dispatcher made a sarcastic comment about "mars is a long way out there". Instead of these Deputies attempting to gain my trust they isntead led me to believe that they could not be trusted at all. They instead humiliated me and discriminated against me because they believed that they could get away with it, because I was Just a "crazy" person. Yet! I still continued to call back because they were trying to take something away from me. They were trying to -M-

take away from me my right to call and contact the 911 emergency number and report that I am in need of some sort of help, without having to be subject to unprofessional inhumane harrassment, ridicule, humiliation, and discrimination. These officers did me wrong and they know it!

4. In the state of mental disorder I was in, and as I became more hostile towards the dispatchers due to their hostility towards me, I then left my house armed and possible on my way to confront them and/or my mother. I would never have armed myself, and I would have never even left that house had I not been persuaded by those Deputies into committing some sort of crime of confronting them, and or committing suicide upon myself due to their comments and suggestions.

In this argument, we claim a right to recover for the mental distress caused by the 911 Operators. This Court of Appeals Opinion in this case denied all liability -20-

from the 911 Operators, and this Court's Opinion at page 8 reads:

> "Dispatchers Townsend, Hardaway, Lauwers, and Gruber may have acted negligently and unprofessionally in dealing with Vreeland, but mere negligence is not enough to constitute a §1983 violation. Davidson v. Cannon, 474 U.S. 344 (1986). In Nishiyama v. Dickson County, Tenn., 814 F.2d 277, 282 (6th Cir. 1987), this court stated:
>
> In our view a person may be said to act in such a way as to trigger a Section 1983 claim if he intentionally does something unreasonable with disregard to a known risk or a risk so obvious that he must be assumed to have been aware of it, and of a magnitude such that it is highly probable that harm will follow."

We claim that the 911 Operators either knew or must be assumed to have been aware that their actions would cause Mr. Vreeland to suffer mental distress, and that the 911 Operators knew and intended so to cause him.

Retired Toledo Police Officer Early in his Affidavit, filed November 8, 1991 stated, as on the pages of his Affidavit,

At Page 8:
". . . .If you are receiving num- -21-

erous phone calls from somebody who is having problems, whether it's alcohol or drug induced or mental dificiency, on the part of the caller, you just try to, first of all, establish some type of rapport with that person, so that you don't aggrivate or aggitate them. Second of all, you try to get a crew to that location of those people to see if you can get some help for them."

And at Page 10:

". . . .EARLY: As far as Mr. Vreeland, the conversations that I heard, and the attitude that I gleaned from him, that what his conversation was, first of all he was probably either high on drugs or had been taking some alcohol, or both. He eluded to the fact that he was possessed, or felt like he was possessed, and he was going to kill somebody or he will have killed somebody, that he, in fact, had a weapon, and there was a lot of conversation going on between the dispatchers and Mr. Vreeland, that I don't believe should have taken place in the first place. And there was some personalities that were coming out from the dispatcher's office, that I believe possibly could have aggravated or aggitated the situation. I believe that there was a dispatcher, a central dispatcher who gave the identification number of 6, there was a Sergeant Townsend, and there was a Lieutenant who I could not get the name of because of the garbled conversation on the tape, that in fact, probably helped aggitate the person on the other phone, on the other line, who was Mr. Vreeland." -22-

And at Page 12:

"RUST: Now then, which of these practices would you say that any person that's had any training would actually know that they were deliberately or with reckless indifference, departing from and not following the standard practices of what dispatchers are supposed to do as you described them before here in your statements.

EARLY: Well generally, the dispatcher number 6, the Sergeant Townsend, and the Lieutenant were all deviating from the standard oeprating procedure of handling calls by private citizens.

RUST: What would you say as to whether those procedures, or the statements they made were intentional or spoken with gross indifference as to the standard practices.

EARLY: Well, I would say it was done with gross indifference to standard practice, in fact, I would believe that you would say that it was an aggitating demeanor on all of them trying to aggrivate the citizen who was making the calls.

RUST: Then would you say that that would then be an intentional departure from the standard practices?

EARLY: Yes it was. Very intentiom l.

RUST: Well about, as to all of these practices, would you say that anyone who had had any training at all, that that would be an intentional departure from them?

EARLY: Yes. <u>It was very intentional</u>.

RUST: Because it was commonly known among police people, it was it commonly known among police people, from your experience, that whether you are a dispatcher, or not, from the training which you receive as to how to handle people who appear to be mentally de-

ranged, or upset, seriously disturbed, like this man saying that he was possessed, and he was breathing hard into the tape, that that's a matter of common knowledge among law enforcement people? That's a basic tenet that's taught to all law enforcement people when you encounter a person who has apparent mental derangement or something like that, at least momentarily, to handle them supportively, instead of in an accusing or hostile manner.

EARLY: Exactly. The best thing they could have done was hang-up on the man. Irregardless of how many times they call, the best thing they could have done was hang up on him. There was one operator that handled it, I thought, perfectly well, however, I did not get any identification off of him, and what he did actually was, tell the man to have a nice day and hung-up on him. That's the best way to handle it. That way you're not aggrivating him, because of your attitude, you're not personally becoming involved, which you are not supposed to do as a law enforcement officer."

Regardless of whether a law enforcement officer is dialing with a mentally ill or disturbed eprson who ahs escaped, or if the mutually ill person has escaped, or if the mutually ill person has just had an attack, the law enforcement officer is taught and knows that he or she should be supportive, not hostile nor accusative. Reasonable

-24-

minds can so find. A jury question is here presented as whether the Monroe County Sheriff deputies were as aware of causing emotional distress to Mr. Vreeland, as the Sheriff of Dickson County Tennessee, should have known that the inmate Trustee would, if allowed to drive a Sheriff's car, attack and kill a woman in Nishiyam v. Dickson County, Tennessee, 814 F.2d.277 (6th Cir., 1987). Defendant 911 operator knew that they would cause mental distress to Mr. vreeland, and the tape calls for the inference that was what they intended to do. A jury could and should find that the Monroe County Sheriff 911 deputies, and the Sargeant, and the Lieutenant, knew that, and that the Sargeant and the Lieutenant gave their implicit, if not explicit approval. The 911 operators and their superiors simply acted in an inhumane, utterly uncalled for, unacceptable, and outrageous, fashion.

In White v. Rockford, 592 F.2d. 381 (CA7, 1979), the Police Officers left minor

-25-

children out on the Chicago Skyway, exposed to the cold, and helpless to help themselves. One child had claims only an injury to "emotional well-being," and that claim was upheld in White v. Rockford, Supra, at page 385:

> "Admittedly the case for the other defendant who alleges only psychological injury is somewhat closer, but we nonetheless feel that the protections of the Due Process Clause against arbitrary intrusions on personal security includes both physical and emotional well-being."

This conflict on the right to recover for unconstitutional abuse of State's power by grossly negligent or intentional wrongs needs to be reserved by this Honorable Supreme Court.

ARGUMENT NO. II

THE EVIDENCE FROM THE AFFIDAVITS OF MARK E. VREELAND SHOW BETTER THAN THIS COUNSEL CAN SUMMARIZE THAT THE 911 OPERATORS' WORDS OF RIDICULE, DISDAIN, DISRESPECT, MADE MARK FURTHER DEPRESSED, FEEL LIKE HIS LIFE WAS NOT WORTH LIVING AND THAT HE WAS A "NOBODY," AND ACTUALLY CAUSED MARK, IN HIS NEUROTIC CONDITION, TO LEAVE HIS HOME, AND TO WALK OUT, WITH AN UNLOADED SHOTGUN, BREECH OPEN, TO CONFRONT THE SHERIFF DEPUTIES, WHERE THE EXPECTANCY THAT MARK WOULD BE SHOT WAS INEXCAPABLE, BUT EVEN AFTER MARK VREELAND MET DEPUTY BELLINO, HE WAS IN THE PROCESS OF MAKING PEACE WITH DEPUTY BELLINO, WHEN DEPUTIES SWEAT AND BELLINO DROVE THE SHERIFF'S CAR AS THOUGH TO HIT MARK; AND THEN MARK WAS SO ANGERED, THAT HE POINTED HIS UNLOADED SHOTGUN AT THE DEPUTIES, AND IN TIME WAS SHOT.

In the "Affidavit of Plaintiff Mark E. Vreeland in Support of Objection To Magistrate's Report and REcommendation," filed January 27, 1992, he stated, at paragraph 2:

> "2. During the early morning hours of April 23, 1977, I began walking down the road from my residence with a broken down shotgun over my shoulder. My residence at the time was 266 E. Hurd Rd., and I had just finished talking with Monroe County Sheriff's Deputies over the telephone on the 911 emergency extension line. I had been talking with these deputies on and off for well over an hour and a half. I remember that -27-

the reasons that I left my home, walking down the road with a shotgun over my shoulder, were because I was persuaded by the Monroe County Sheriff's Departments 911 Dispatch Operators into believing that I was less important than other people, that my life was not worth living and that I should kill myself, that I was just a "sick bastard," and that "they" the Monroe County Sheriff's Department would "oblige" in killing me."

And paragraph 4 of the same Plaintiff's Affidavit reads:

"4. In the state of mental disorder I was in, and as I became more hostile towards the dispatchers due to their hostility towards me, I then left my house armed and possible on my way to confront them and/or my mother. I would never have armed myself, and I would have never even left that house had I not been persuaded by those Deputies into committing some sort of crime of confronting them, and or committing suicide upon myself due to their comments and suggestions."

Even after Mr. Vreeland had left his home, and met Deputy Bellino, he was getting along all right with Deputy Bellino, and was not angry, and would have put his shotgun down, had not Deppties Sweat and Burkey driven the Sheriff's car as though to hit Mark.

Thus, in paragraph 6 of Plaintiff's said Affidavit, Mr. Vreeland stated:

> "First the Monroe County Sheriff's Department 911 Operators coaxed and persuaded me at a time when my conscious mind was weak, at a time my mind was sick, at a time my mind was malfunctioning. Then after I was led to believe my life was not worth living and they would 'oblige in killing me,' I then got out onto the road with a gun. Then even after I was confronted and Deputy Bellino had secured the scene, they (Deputies Sweat and Burkee) then disturbed, broke up, and upset the scene by attacking me with their patrol car."

Mentally ill and disturbed persons cannot defend themselves like a normal person. Mentally ill persons need the protection and help of the law, more than mentally normal people.

Mr. Vreeland in time was shot, after 2 other Sheriff Deputies drove their Sheriff's car right at him, missing him by inches. Michigan State Trooper Brown called as back-up, saw the Sheriff Deputy drive the car at Mr. Vreeland and stated in his official report, as follows, as given in the Court of Appeals

Appendix at page 104:

> "The subject had a shotgun on his righ...of Busweiser beer in the other hand. The deputy was...to drop his gun and the subject stated, "you better kill...
>
> Approximately three minutes passed when anot...Sheriff's Department Patrol vehicle arrived at the scene...the arriving vehicle appeared to be trying to hit the...holding the shotgun with their patrol vehicle."

Once Monroe County established their 911 "Central Dispatch" system, Monroe County in truth and im fact held out to the persons in Monroe County -- "If you need help, call us, and we'll give you Professional help." That call went to the mentally ill, women abused by husbands, women abused by gentleman friends, and to the disabled, like a diabetic. Mr. Vreeland needed help like a diabetic needs insulin. Monroe County in truth asked for a "special relationship" to all who called in.

In Balistera v. Pacifica Police Department, 855 F.2d 1421, (CA 9, 1988), the Court gave Constitutional 1983 protection to a woman from attack by her estranged husband. In

Balistera, Supra, the Court commented on the so-called "special relationship," as shown at page 1422:

> "'To determine whether a "special relationship" exists, a court may look to a number of factors, which include (1) whether the state created or assumed a custodial relationship toward the plaintiff, (2) whether the state was aware of a siecific risk of harm to the plaintiff; (3) whether the state affirmatively placed the plaintiff in a position of danger; or (4) whether the state affirmatively committed itself to the protection of the plaintiff. See Ketchum, 811 F.2d at 1247; Escamilla, 796 F.2d at 269-70; Jensen v. Conrad, 747 F.2d 185 194 (4th Cir. 1984).'"

In Archie v. City of Racine 826 F.2d 480 the Seventh Circuit's panel opinion was vacated En Banc 847 F.2d 1211 (1988), but the first opinion gives support that a special relationship under 1983 principles may exist without custody or control, when it stated in 826 F.2d 497:

> "(16) A special relationship between the state and a particular person can also arise where there is no actual control or custody by the state. A municipality that puts a person in a position of danger from private persons and subsequently fails to protect that person can be held -31-

liable under §1983 for the resulting deprivation of life or liberty. Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982)."

Logically, if a 911 agency causes a mentally ill person to become so angry that the mentally ill person cannot exercise his or her limited judgment, and defend him or herself as otherwise the mentally ill person could, such mentally ill person has been seriously harmed. Se here.

The Law at its best responds to reason and holds what is just, and it is basic that just when one deals with a mentally ill person, that that mentally ill person must be expected to do the unexpected.

Here, the 911 Operators simply caused Mr. Vreeland to become more mentally ill and disturbed, and to do what Mr. Vreeland did.

That is a more direct relationship than when a woman calls for help and is not given help, but this counsel submits that then 1983 should cover such cries for help.

When Mark Vreeland first called to 911,

he showed no plan, intention nor any in dication of leaving his home. He knows what went on in his mind, and what caused him to leave where he was, so a Jury and a Judge could infer.

ARGUMENT NO. III

THE FEDERAL COURT SYSTEM NEEDS A DIRECTION FROM THE UNITED STATES SUPREME COURT TO REMAND ALL PENDING PENDENT STATE COURT ACTIONS TO THE STATE COURTS, ONCE THE FEDERAL COURT, APPELLATE OR DISTRICT, DETERMINES TO DISMISS ALL THE FEDERAM ACTIONS.

SUCH IS DIRECTED BY TITLE 28, SECTION 1367, BUT THE FEDERAL COURTS DO NOT SEEM TO WANT TO ABIDE BY THAT STATUTE.

Title 28, Section 1367, Supplemental Jurisdiction is typed in full in the Appendix to this case at page 55.

We respectfully point out sub-section (c), and particularly (3) thereof. Subsection (c) reads:

> "(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if --
>
> (1) the claim raises a novel or complex issue of State law, -33-

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction.

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, thereare other compelling reasons for declining jurisdiction." (Emphasis Ours.)

In our Rule 59 Motion in the District Court's / we asked for our State Causes of Action to be transferred to the State Courts, where in sub-section F of our Motion we stated:

"F. Judge Rosen did not refer to, nor consider, our plea, that as to the State's Causes of Action derived from Michigan law that the Court grant the Relief asked in Paragraph 9 of our Objections filed December 13, 1991, that Judge Rosen remand, or transfer such actions based on the State law of Michigan, to a Michigan Court, with the obligation on Defendants not to assert any Statute of Limitations defense which could not have been asserted on the filing of this case on April 30, 1991, in the Federal Court; as this lawsuit presents new and complex issues of Michigan law best handled by a Michigan Court, all of which is well supported by Financial General Bankshares Inc. v. Metzger, 680 F.2d 768 (CA DC, 1982); Pharo v. Smith, 625 F.2d 1226 (CA 5, 1980);

G. Plaintiff moves this Court also under Rule 59 to vacate its Judgment As to All the State Actions on Michigan Law, and to dismiss without prejudice, or under such Conditions that Plaintiff may refile -34-

within 30 days under Federal Title 28, Section 1367(d),..."

Argument No. 7 in the Court of Appeals asked for that Court to order dismissal of the state actions under Title 28, Section 1367, and so as to leave the parties as to the Statute of Limitations, where they were when this action was started. See Pharo v. Smith, 625 F.2d 1226 (CA5, 1980); Financial General Bankshares, Inc. v. Metzger, 680 F.2d 768 (CA D.C., 1982)

Questions on Michigan Law as to each of these Actions for slander, libel, intentional tort, assault, and malicious prosecution are yet undetermined, as Defendants have not cited so-called "cow cases" -- cases that stand on all fours with the controversies at Bar. Prosecutor Frey and Michigan Trooper Murphy are claimed to have upheld and conditioned Plea Bargaining for a while because Plaintiff would not give up his right to sue. Both Defendants Frey and Murphy knew that the evidence of Mr. Vreeland's mental illness was

was so strong that he should not be prosecuted.

ARGUMENT NO. IV

THE STATE ACTIONS FOR SLANDER, LIBEL, INTENTIONAL TORT, ASSAULT, AND BATTARY, WERE AND ARE VALID ACTIONS, AND NOT BARRED BY GOVERNMENTAL IMMUNITY, FI THE ACTOR WAS CHARGEABLE WITH GROSS NEGLIGENCE.

The various insulting, ridiculing, humiliating, remarks by the 911 Operators including calling Mr. Vreeland "crazy," a "nut," a "chimpanzee," a man who preferred to sleep with men, and in general a person with whom others should not associate. Such is actionable slander under Michigan Law. Callaghan's Michigan Civil Jurisprudence; Hall v. Citizens Insurance Co., 368 N.W. 2d 250 (1985).

Likewise, any offer to do harm, as Deputies Sweat and Burkey did in almost hitting Mr. Vreeland with the Sheriff's car, is actionable. Callaghan's Michigan Practice, Assault and Battery 528.

So also Mr. Vreeland's right to an action for intentional infliction of emotional -36-

distress. Campos v. Oldsmobile Division, GMC, 71 Mich. App. 23, 246 N.W. 2d, 353, 354.

Our overall Court system is best managed when State Courts are not defining Federal rights, and Federal Courts are not defining State rights.

ARGUMENT NO. V

THIS COURT SHOULD GIVE DIRECTION TO THE FEDERAL AND STATE COURTS THAT TRIAL COURTS WHEN FACED WITH A RULE 56(F) MOTION FOR LEAVE FURTHER DISCOVERY, FILED AFTER A DISCOVERY CUTOFF, AND AFTER A MOTION FOR SUMMARY JUDGMENT, SHOULD GRANT THE SAME IF COUNSEL CAN SHOW ANY PRACTICAL POSSIBILITY OF SECURING EVIDENCE THAT WOULD DEFEAT THE MOTION FOR SUMMARY JUDGMENT.

ANY MISTAKES, OR DELAYS BY THE RULE 56(F) MOVING ATTORNEY SHOULD BE HANDLED BY APPROPRIATE MONETARY FEES ON THE ATTORNEY, WHERE NEITHER THE MOVING PARTY NOR COUNSEL ARE CHARGEABLE WITH EVASION OF DISCOVERY, NOR OTHER CULPABLE ACTS DIRECTED TOWARD SUPRESSING RELEVANT EVIDENCES.

In support of the vlaidity of our 1983 Actions, our claims for slander, and intentional tort, and the need for this Honorable Supreme Court to give directions on Rule 56(F) Motions, we cite a Letter, of December 23,1991 from Charlene D. Palmer, Training & Staff Development, Ohio Department of Mental Health,

which was attached to some filing in the District Court, and which in parts reads:

> "As you already know, I teach the Mental Health section of the Ohio State HIghway Patrol cadet program. Within this section are interventions for law enforcement personnel when dealing with persons who are aggressive and out of control (regardless if they are mentally ill.)."
>
> "There are three essential characteristics to violent behavior that are studied.
> 1. Violence produces more violence. If an angry person is responded to in anger or violently, the anger/violence will escalate.
> 2. Violence is a defensive reaction. The person is attempting to maintain a form of control,... the only way they may feel they know how to accomplish that is to intimidate those around them.
> 3. Violence is time limited, if you can delay long enough, it will subside. Of course, appropriate verbal responses are necessary, or the situation will escalate."
>
> "In the first phase of the crisis cycle: anxiety, the person is responded to with supportive interventions. For example if a person is yelling about something, it would be appropriate to tell the person that you can see that they are angry and that this thing is bothering them and you'd like to talk about it. If this person's anger has excalated to the defensive phase of the cycle, you might respons with the supportive 'I can see you're angry' but with the added directive -33-

intervention: 'but you need to step over here so we can talk' or 'you need to get away from that chair so we can sort this out." Any taunting or snide remarks or challenges will be taken as 'permission' to escalate and you can bet that the person will escalate."

Even where there has been a substantial delay, further Discovery will be allowed where material, and denied when it appears that Discovery will not produce any material evidence. See Fisher v. Metropolitan Life Insurance Co., 895 F.2d 1073 (CA5, 1990).

Here, this counsel simply was not aware of all the fine points, nor the requirements for a valid 1983 Action, and the need for Discovery thereon. This counsel, now 77, a single practitioner, fights tough cases, and, despite efforts to the contrary, gets behind in his work. Not too many lawyers in the cities know of the nuances, defenses, and pitfalls of 1983 Actions. One Detroit Attorney had taken Mr. Vreeland's case, but kept putting him off, and finally about a month before the Statute of Limitations was to run, returned Mr. Vreeland's file, and he 39

came to this counsel. In this Action, no Motion attacking the Complaint was filed. Not until the Motion for Summary Judgment was filed did this counsel become aware of the main points of defense. That may no be excusable, but it happened, and this counsel says a situation like this happens many, many, times. The issue then arises: Is the client to be forced to suffer, because his attorney did not know, and act out, all the precautions? Should a party have as a matter of course, or of right, a period of 30 days to work Discovery on needed points?

How many General Practitioners knew the Complexities of 1983 Nuances, and procedural Technicalities? Very few. How many Judges, before they becane Judges, really knew Section 1983?

The Rules of Federal Practice are supported to avoid "ambush" -- but that is what happened.

Retired Police Officer Early's Affidavit show what we were after. It was basic and valid, and no one has challenged it. -40-

Any sanctions should be against this counsel in the way of any additional fees caused Defendants.

In Conley v. Gibson, 355 U.S. 41, 2L. ed. 2d. 80 (1957) in 2 L. ed. 2d. at page 86, Mr. Justice Block stated:

> "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 US 197, 82 L.ed 745, 58 S. Ct. 507."

Our point here is, when closely scrutinized, valid, because the highest goals of America are truly served when each side is allowed full Discovery on material points, and cases are determined on the nerits, and not of a Misstep of Counsel."

CONCLUSION

This Counsel has acted with respect for the Courts, and while he may have been delayed at times, there has been no artful attempts to take any unfair advantage. -41

Clients who are represented by other attorneys no more skilled nor familiar with the intricacies of various areas of the law not commonly encountered, will be better protected, by granting the reliefs herein moved.

America at its best wants to see every side fairly represented, and cases determined on their merits, not on procedural technicalities.

Our Courts can be a leader toward the observance of the higher American values. Respect for the mentally ill, as well as for those not so afflicted, should be a goal for our Courts.

This Counsel respects this Honorable Supreme Court, and stands committed to do his part in maintaining the Court's highest standards.

We respectfully ask that our Petition for a Writ of Certiorari be granted.

Respectfully submitted,

John G. Rust

-42- John G. Rust
Attorney for Petitioner.